



# Teacher Rights and Freedoms

Speech, Privacy, Religion, Self-Incrimination



Without fear of discipline or termination as a principal, could you:

- Write a letter to the local paper criticizing Barack Obama's presidency?
- Write a guest column in the school paper citing poor leadership of the superintendent?
- Give an on-camera interview criticizing the reduction of school librarians?
- Speak at a rally to legalize marijuana?

*....What if you were a teacher? Would that change your freedom?*

## Freedoms

- Religion
- Speech
- Press
- Assembly
- Warrant-less searches
- Due Process

## Governed by

- Constitution
- Statutory Relationships
  - Federal, State, Local Laws
- Collective Bargaining

# Teacher Rights and Freedoms

## Academic Freedom

- Widely misunderstood and greatly used
- More explicit in higher ed contracts, statutes
- In K-12, teacher freedoms not explicitly defined beyond the Bill of Rights
- Teachers must prove “pall of orthodoxy”, or state interference that is overbearing

## Extent of Control

- Government can restrict when necessary to fulfill responsibilities to operate effectively and efficiently...
- But cannot restrain free speech in an “open debate”...
- *Public officials are not constitutionally required to allow public dissent by their employees if it interferes with governmental operations*

# Teacher Rights and Freedoms

# Must Balance

- Speech is a 1<sup>st</sup> Amendment Right
  - Public Concern v Personal Interest
  - Employee's interest against district interest



# Pickering v. Bd. Of Ed. SC 1968

- First A: Will the statement create problems with maintaining rapport with supervisors or will it create discord among co-workers?
- Then B: “Government employer’s need for political allegiance from its *policy making employees* outweighs the employee’s freedom of expression”
- Flexible rule that balances public interest against private interest

## *Mt. Healthy v. Doyle* SC 1977

- What prevents an employee from using the exercise of free speech as a pretext to avoid termination from other causes?
- “The conduct must be protected and must have been a motivating factor in dismissal. Conclusion must be that the school board would have reached the same decision in the absence of the misconduct.”

# Connick v Meyers SC 1983

- Is the speech a matter of public concern?
  - Yes: Apply Pickering
  - No: Pickering does not apply
- *What is the definition of “a matter of public concern”?*



# Speech Test of Public Employees

- Burden of proof rests on the state...
- Speech can be denied if...
- Denial necessary to prevent “substantial interference
- Low standard of proof when public speech on private interest results in adverse action





## ***Private Communication v Public Communication***

*Givhan v. Western Line School Dist. SC 1979*



# Cases

- *Stoman v. Colleton*
- *East Hartford Ed. Assoc. v. Brd of Ed.*
- *Seemuller v. Fairfax County Sch. Brd.*
- <http://www.nsba.org/MainMenu/SchoolLaw/Issues/Employment/RecentCases/Weingarten-v-Board.aspx>
- *Go to case study*



## **Right to Privacy**

Privacy: A Fundamental Right



# Privacy

- Teacher's Mental and Physical Examinations
  - Is there a rational nexus?
- Drug Testing
  - Under what circumstances can teachers be tested for drugs?)
- Search of Teacher Workplaces
  - When can a teachers work place be searched?
  - *Daury v. Smith*

# Searches

- Probable cause in the legal sense not required of work place searches
- Searches OK so long as they are undertaken with some reasonable basis to further the efficient and competent management of the district
- There is a legal expectation of privacy with personal items. Therefore a warrant is needed for such a search. .

# “Morality” or “Fitness to Teach” based on outside activities

- Rational nexus between the conduct in question and professional duties
- School Board must establish that the outside activity has a detrimental impact on the teacher’s ability to teach
- WA: Hoagland v. Mount Vernon

## Hoagland Factors: Propriety of Discharge for Outside Conduct Determined By....

- Age and maturity of the student
- Likelihood that conduct will adversely affect students of other teachers
- Degree of anticipated adversity
- Proximity or remoteness in time of the conduct
- Extenuating or aggravating circumstances
- Likelihood conduct will be repeated
- Motive underlying the conduct
- “Chilling effect” on rights of teachers involved or other teachers



# Freedom of Religion

- Civil Rights Act
  - Neither inhibit nor promote religion
  - Religious garb
- <http://www.sikhnet.com/>

*Cooper v. Eugene Sch. Dist.*  
*SC Oregon 1986*

# Religion

- Religious freedom has limits
- Teachers must teach approved curriculum
- Teachers can request/be granted accommodations for religious holidays
- Rules/standards must meet Lemon v Kurtzman tests
- Religious garb may or may not be seen as promoting one religion over another

# Privilege against self-incrimination

- *Beilan v. Philadelphia Sch. Dist. SC 1958*
- *Right itself does not allow avoidance of questions regarding professional competency or fitness to teach*
- *Invoking 5<sup>th</sup> amendment in criminal proceeding not necessarily cause for dismissal*
- *School board could dismiss for insubordination if teacher fails to answer questions about fitness to teach/competency*